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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,676	03/23/2000	Mayer D. Schwartz	7049 US	2181
7812	7590	06/15/2005	EXAMINER	
SMITH-HILL AND BEDELL, P.C. 16100 NW CORNELL ROAD, SUITE 220 BEAVERTON, OR 97006				FERRIS, DERRICK W
ART UNIT		PAPER NUMBER		
2663				

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/535,676	SCHWARTZ ET AL.
	Examiner Derrick W. Ferris	Art Unit 2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 February 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-9 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 March 2000 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed 2/3/2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: a difference between a decode buffer and a smoothing buffer. In particular, applicant provides no support in their response for the amendments to the specification. Specifically, no statement that applicant believes that no new matter was added was not found in the response filed 2/3/2005 and furthermore no support for said amendments was provided (i.e., support showing a clear distinction in applicant's specification between a decode buffer and a smoothing buffer). Instead applicant introduces a new distinction and provides no support for such a distinction, see e.g., applicant's remarks on page 9, first full paragraph. In fact, applicant appears to *intentionally deceive* the patent office by filing such an amendment. As evidence of such a deception, see the first full paragraph of the Summary of Invention on page 2 of the originally filed specification in comparison with applicant's amendment to the specification filed 2/3/2005 on page 2 with respect to the paragraph starting on page 2, line 11. In particular, note page 2, line 18 of the originally filed specification. Specifically note that applicant's teachings show that *the smoothing buffer* is used for decoding (emphasis added). Hence applicant admits in their specification that there is no distinction and thus possibly teaches away from such a distinction. Now for the intentional deception. See the same line in applicant's amendment filed 2/3/2005 at line 10. Note here applicant uses a "decoder buffer" instead of a "smoothing buffer" where the originally filed

specification clearly uses the term “smoothing buffer” as mentioned previously. Also note that no prior amendment was made to make such a distinction (i.e., prior amendment filed 2/2/2004 did not address the paragraph at issue). Thus applicant attempts to mask a distinction by attempting to trick the patent office into thinking that such a distinction was made in the originally filed application by filing new subject matter. Careful review of applicant’s originally filed specification shows no mention of the term decode buffer and arguably teaches away from such a buffer as mentioned previously. Careful review of the prosecution shows that applicant may argue such a distinction when comparing the prior art but makes no such distinction in their specification. In adding new subject matter to the specification, applicant has changed the scope of the invention. For example, in distinguishing between a shaping buffer and a decoding buffer applicant has changed the scope of their invention. One example of a change is scope in how the buffer is serviced based on the rewritten paragraphs on page 4. In the original specification the buffer Bufn is serviced based on the earliest time before the decode time that a video elementary stream TS packet can enter the smoothing buffer Bufn. Applicant has amended the above service to clarify that the decoding buffer is serviced based on the earliest time before the decode time that a video elementary stream TS packet can enter a decode buffer which is a *different* buffer and one that is downstream from the smoothing buffer hence providing a relationship between smoothing buffer and decoding buffer which did not previously exist with respect to buffer filling (see e.g., newly added claim 8 which may better illustrate this point). Hence applicant has added new subject matter that changes the scope of the invention. Thus in summary, applicant does not teach such a distinction between a decode buffer and a smoothing

buffer nor does applicant teach a relationship between the two buffers as recited e.g., in amended claim 4.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1-9** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, a decoder buffer is not supported in applicant's specification. See similar reasoning as provided above in the response to applicant's amendment. For the purpose of the rejection, the examiner disagrees with the applicant's claim analysis. In particular, applicant appears to argue that a smoothing buffer is at the encoder side and a decoding buffer is at a decoding side (i.e., at a separate entity which is downstream), see e.g., page 9 of applicant's remarks. The examiner, however, notes that no distinction is made in applicant's *original* specification between a decoding buffer and smoothing buffer (i.e., that there are two separate buffers and that one buffer is downstream from another buffer). Furthermore, applicant teaches that the smoothing buffer is connected to the decoder and not a decoding buffer such that the decoding buffer and smoothing buffer are collocated at the receiving entity since the smoothing buffer is used for decoding as taught by applicant's specification. For the purpose of the

rejection, the examiner notes that the decoding buffer and smoothing buffer are one and the same since applicant made no distinction in their specification and clearly teaches that a smoothing buffer is used for decoding (and not encoding as argued by applicant). Thus any claim recitations that recite a decode buffer are read on a smoothing buffer.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,287,182 to Haskell et al. ("Haskell") in further view of U.S. Patent No. 5,534,937 A to Zhu et al. ("Zhu").**

As to **claim 1**, applicant claims transferring a picture frame from the smoothing buffer prior to the picture's decoder time stamp as shown in applicant's figure 3. In particular, applicant recognizes that by transferring pictures from the smoothing buffer commencing at a specified time prior to the pictures DTS, the possibility of the decoder buffer overflow is greatly reduced and therefore the quality of the picture is greatly enhanced. *Haskell* discloses a timing recover for VBR video on ATM networks. In particular, *Haskell* discloses the importance of eliminating buffer overflow/underflow at the receiver (e.g., see column 1, lines 46-50 and column 3, lines 33-43). Specifically, *Haskell* discloses alleviating underflow prior to decoding (e.g., see column 2, lines 5-13). See e.g., figure 2 with respect to a receiver and specifically a demultiplexing unit 200.

Shown in figure 2, *Haskell* discloses demultiplexing VBR streams of data composed of sequences for a picture based on a decode time stamp. In particular, one example of a smoothing buffer is video data buffer 202 which works in combination with a video display console 203 before entering a decoder 204 (e.g., see column 5, lines 4-20). Examiner would like to point out that part of the purpose of the video data buffer (i.e., smoothing buffer) is to load the buffer early with packets for a frame so that when the frame's decode time comes, the full data for the frame is available for decoding. *Haskell* discloses controlling overflow by adjusting (i.e., increasing) the size of the buffer in order to load the buffer early with packets for a frame so that when the frame's decode time comes, the full data for the frame is available for decoding (e.g., see column 5, lines 46-54). *Haskell* discloses controlling buffer underflow by using a buffer fullness value used to control a jitter delay value which indirectly controls the way information is released from the buffer (e.g., see column 6, lines 9-14). Examiner would like to point out that the information is released from the buffer (i.e., "transferred" in reference to the recited claimed subject matter) based on the DTS (e.g., see column 5, lines 4-20), however, the *Haskell* also recognizes that increasing the size of a buffer (i.e., "loading" in reference to the recited claimed subject matter) helps control overflow which removes the implicit assumption that the video data buffer is only big enough to store a single image frame.

Haskell may be silent or deficient to disclosing a statistically multiplexed stream. In particular, *Haskell* discloses a VBR stream for the decoder but is silent or deficient to the type of stream before the demultiplexer (e.g., see column 1, lines 5-10). Examiner notes that it would have been obvious to one skilled in the art prior to applicant's

invention to have a statistically multiplexed MPEG transport stream. Examiner notes one skilled in the art would be motivated to multiplex various streams together for the purpose of statistical multiplexing as is inherent in ATM. As such, the background of *Haskell* cures the above-cited deficiency by disclosing that the data is statistically multiplexed (e.g., see column 20, lines 19-24). *Zhu* also helps to further clarify statistical multiplexing with respect to figure 9 for a video source (e.g., such as MPEG video). In particular, a CBR stream is sent using statistical multiplexing as VBR where it is later converted to CBR before entering a video decoder 910. *Zhu* also teaches a smoothing buffer 926 as well.

As to **claim 2**, in addition to applicant's admission in the background, see e.g., column 5, lines 13-20 of *Haskell*.

As to **claim 3**, data is saved in the video decode buffer as soon as it arrives.

As to **claim 4**, see the combined rejections for claims 1 and 3.

As to **claims 6-7**, since the decode buffer and smoothing buffer are the same, see 4.

As to **claim 8**, see similar rejection to claim 1.

As to **claim 9**, see similar rejection to claim 3.

Response to Arguments

6. Applicant's arguments filed 2/3/2005 have been fully considered but they are not persuasive. In particular, applicant argues new subject matter. As such, please see above with respect to the new subject matter and applicant's argument.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

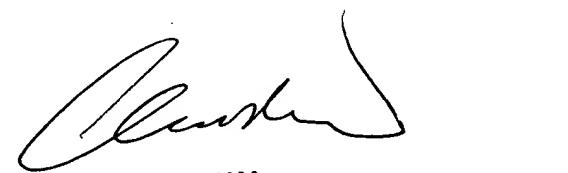
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (571) 272-3123. The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick W. Ferris
Examiner
Art Unit 2663

DWF


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SUPERVISORY PATENT EXAMINER
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